IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 169 of 1985
WITH
SPECIAL CIVIL APPLICATION No. 218 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

D S VASAVADA & 5 - Petitioner(s)

Versus

CHAIRMAN G E B & 112 - Respondent(s)

==========

Appearance :

MR DS VASAVADA for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2 - 6.
MR SP HASURKAR for Respondent(s) : 1 - 2.
DELETED for Respondent(s) : 3, 5, 9,27 - 28, 57, 67, 69, 72, 82,84 - 85, 87, 91, 102,
RULE SERVED for Respondent(s) : 4, 12, 37, 47, 51, 61, 92,99 - 100, 103, 105,
RULE UNSERVED for Respondent(s) : 6 - 7, 10, 13, 18, 21, 24, 32, 38, 40, 44, 46,48 - 50, 54, 56,59 - 60, 62, 66,70 - 71,73 - 74, 86, 96, 98,
NOTICE SERVED for Respondent(s) : 8, 11,14 - 17,19 - 20,22 - 23,25 - 26,29 - 31,34 - 36, 39,42 - 43, 45, 52, 55, 58,63 - 65, 68,80 - 81,88 - 90, 95, 97, 101, 106,108 - 109,111 - 113.
SERVED BY RPAD - (N) for Respondent(s) : 33, 93,
NOTICE UNSERVED for Respondent(s) : 41,
NOTICE NOT RECD BACK for Respondent(s) : 53,75 - 79, 83, 94, 104, 107, 110,

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 16/12/2005

ORAL JUDGMENT

1.Special Civil Application No.169 of 1985 is filed by GEB Power Engineers' Association and other Junior Engineers of Gujarat Electricity Board, praying for the direction to the respondents to treat the petitioner Nos.2 to 6 as promoted to the post of Deputy Engineer with retrospective dates and the respondent-Board should be directed to pay the differences in salary and all other consequential benefits including seniority from retrospective dates with interest. The petitioners have also prayed for quashing and setting aside the orders issued in favour of the respondent Nos.3 to 113 which have been annexed alongwith the petition and marked as Annexure-A collectively. As they are against the criterion of seniority, the law settled by this Court, arbitrary, illegal, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

2.Special Civil Application No.218 of 1985 is

filed by the same Union and by one Mr.D.J.Patel, Junior Engineer in Gujarat Electricity Board and prayed for the similar relief.

3.Special Civil Application No.169 of 1985 was admitted on 1.2.1985 and interim relief was granted to the extent that the promotions shall be subject to the result of the petition. Special Civil Application No.218 of 1985 was admitted on 27.01.1986.

4.Since the subject matter of both these petitions is same, they are being heard and disposed of by this common judgment. The facts are taken from Special Civil Application No.169 of 1985.

5.It is the case of the petitioners that the petitioners have challenged the action of the respondent-Board in issuing the promotion

orders to respondent Nos.3 to 113 ignoring the seniority of the petitioners and violating Boards' Rules for promotion to the post of Deputy Engineer. It is also the case of the petitioners that the petitioner No.2 joined the services of the respondent-Board on 19.1.1955 as Assistant Foreman and was promoted to the post of Major Foreman, Plant Operator Grade-I and Junior Engineer from 11.8.1956, 20.10.1964 and 5.3.1973 respectively. Petitioner No.3 joined the services of the respondent-Board on 25.11.1960 as Assistant Operator and was promoted as Plant Operator on 27.5.1967 and then was promoted as Junior Engineer on 4.7.1973. The petitioner Nos.4 and 5 joined the services of the respondent-Board on 31.8.1962 and 27.4.1964 respectively as Assistant Operator. These petitioners were promoted to the post of Plant Operator in the year 1967 and 1970 respectively and subsequently, they were promoted to the post of Junior Engineer in the

year 1973 and 1974 respectively. The petitioner No.6 joined the services as Senior Technician in respondent Board, and was promoted to the post of Plant Operator on 8.11.1970 and subsequently he was promoted as Junior Engineer from 10.12.1974.

6.It is also the case of the petitioners that the respondent-Board had formulated the Industrial Relation Committee, which has laid down the policy of promoting the Junior Engineers as well as for recruiting the Deputy Engineers in the respondent-Board. As per the said policy formulated by IRC, as and when vacancies in the cadre of Deputy Engineers arose, 40% of the vacancies were to be filled in by elevating the departmental Junior Engineers Diploma Holders, 40% by Departmental Junior Engineers Degree holders and 20% by direct recruitment. The respondent-Board had issued the amendment No.2 to G.S.O.No.7 fixing minimum experience

required for promotion from the Junior Engineer to the post of Deputy Engineer in case of departmental candidates. The respondent-Board has arranged series of meetings with the petitioner-Association for revision of the said promotion policy. Accordingly, the minimum experience of 7 years was required in case of Diploma holders as per G.S.O.No.7.

7.It is also the case of the petitioners that the respondent-Board has issued a circular No.GEB/E-II/Genl/8095 dated 13.08.1960 which provided for the Rules relating recruitment, promotion, qualification and experience for the post in Class-I and Class-II Engineering services. Para-5 of the said circular provides that qualification and experience for Class-I and Class-II Engineering services have been as per Appendix 'B' to the said circular. As per the said circular read with Appendix 'B' thereof, the petitioners stated that the

incumbent to the post of Deputy Engineer must possess a degree in Elect/Mechanical/Civil Engineering or recognised Diploma as listed in the Schedule-I attached to the Appendix 'B' to the said circular. It is further stated that due to bifurcation of old Bombay State, Gujarat and Maharastra States came into existence. Due to this, the Department of Technical Eduction Bombay State was also bifurcated and for Gujarat State, Separate Department of Technical Education was set up for carrying out the same functions which previously Department of Technical Education Bombay State was carrying out. The petitioner No.2 was possessed the certificate awarded by Board of Technical Education Bombay State and petitioner Nos.3 to 6 were possessed same certificate awarded by the Board of Technical Education Gujarat State.

8.It is also the case of the petitioners that the qualification prescribed for the post of Deputy

Engineer as per the circular dated 13.8.1960 has not been modified by the Board and hence the petitioners have represented the respondent-Board to grant the promotion to the petitioners. The action of the respondent-Board in not giving promotion to the petitioners is against the criterion of seniority adopted by the Board and against the settled legal position and also discriminatory and violative of the Articles 14 and 16 of the Constitution of India.

9.Mr.D.S.Vasavada, learned advocate appearing for the petitioners has submitted that though the petitioners have possessed requisite qualification for the post, they have not been given promotion to the post of Deputy Engineers. He has further submitted that the amendment which was made in Indian Electricity Act, 1956, could not be applied retrospectively. He has further submitted that

if the petitioners were possessing the requisite qualification for considering their cases for promotion of the Deputy Engineer, the same could have been considered by the respondent-Board before giving any promotion to the juniors to the post of Deputy Engineers and hence, the petitioners are entitled to the relief prayed for in the present two petitions.

10.On behalf of the respondent-Board, an affidavit-in-reply was filed wherein it was stated that none of the petitioners was having degree qualification or diploma in engineering and each one of them was having only certificate course qualification. The petitioner Nos.3,4 and 6 were having Certificate of Electrical Engineering qualification and the petitioner Nos.2 and 5 were having certificate of Electrical Engineering qualification. It is further stated in the said affidavit that Indian Electricity

Rules 1956 were amended and from 9.5.1981(published in Govt. of India Part-II–Section 3–Sub Section (i)), the following minimum qualification has been prescribed in Annexure XIV:-

"The minimum qualifications for the operating and supervisory staff shall preferably be a high second class diploma in Mechanical or Electrical Engineering or a degree from recognised institute or university. The minimum qualifications for the persons to assist the operating and supervisory staff shall be certified from the recognised industrial training institute in appropriate trade."

11.It was further stated that the petitioners were not having Diploma in Engineering and so they have not been given promotion. Persons junior to the petitioners were given promotion only because they were having diploma or degree

in engineering. It was further stated that the promotion to the petitioners were not given only on the basis that they do not have requisite qualifications and the promotions were not denied to them on account of their personal records as alleged. It is further stated that the certificates which the petitioners were having were not equivalent to degree or diploma. The respondent-Board had written letters dated 12.4.1983 and 20.5.1983 inquiring from the Director of Education, Ahmedabad and R.C. Technical Institute, Ahmedabad and the said office had replied by the letters dated 20.5.1983 and 14.6.1983 that certificates are not equivalent to diploma in engineering. It was further stated that due to the amendment in Electricity rules since 1981, only degree holders and diploma holders can be given promotion to the post of Deputy Engineer and the Board cannot give promotion contrary to statutory provisions. It is further stated that

all the promotions which have been given to the respondents who were having requisite qualifications either degree or diploma and no certificate holder was given promotion to the post of Deputy Engineer. It is, therefore, stated that the petitioners are not entitled to the relief which prayed for in the present petition.

12.After having heard the learned advocate appearing for the parties and after having gone through the averments made in the present petition as well as affidavit-in-reply and after having gone through the relevant standing orders, circulars and instructions placed before the Court, the Court is of the view that the petitioners are not entitled to the relief as prayed for in the petition. The plain reading of G.E.B. Clause-XIII of Annexure-B to the Circular No.8095 dated 13.8.1960 makes it very clear that for promotion to the post of

Deputy Engineers/Assistant Controller of stores, the qualifications prescribed are as under:-

(i)Must possess a degree in Ele./Elec. and Mech./Civil Engg.

(ii)Technical Assistants/overseers working in the department who possess recognised diploma as listed in schedule-I which may be modified from time to time may also be eligible to appear for interview by the Selection Committee if they have crossed the E.B. and have put in adequate service in that cadre provided they are recommended by the S.E. of the circle.

13. The above clause clearly stipulates that the Junior Engineers should possess atleast a degree in Electrical or Civil Engineering or in the alternative, they must be holding diploma certificates and they have crossed the efficiency bar, so as to make them eligible to appear in

interview before the Selection Committee and the names must be recommended by the Superintendent Engineer. The list of Recognised Diplomas given in Schedule-I, prescribes requisite qualifications as:-

(i)Diploma in Electrical Technology/Electrical Engineering and,

(ii)All certificates and diplomas in Engineering and other branches of Technological courses.

14.If the above referred criteria is taken into consideration, it is made very clear that the candidates must be either degree holder or diploma holders. The certificates possessed by the petitioners are not considered to be equivalent to amount the certificates of diploma. It was made very clear by the Director of Education as well as R.C. Technical Institute that the certificate of Electrical Engineering/certificate of Mechanical Engineering may not be considered equivalent to diploma since the petitioners are not the

diploma holders, they have no right to be considered in the promotion to the post of Deputy Engineers.

15.In the above view of the matter, the Court is of the view that the petitioners did not possess requisite qualifications for consideration of their case for promotion to the post of Deputy Engineers and, therefore, the respondent-Board has rightly not granted the promotion to the petitioners for the post of Deputy Engineers.

16.The Court has not found any substance in this two petitions and hence, both these petitions are dismissed. Rule is discharged without any order as to costs.

(K.A.PUJ,J.)

Hitesh